

related to the stock portion of the stock-option trade.

After the stock leg(s) of the orders are communicated to the designated broker-dealer for execution, the designated broker-dealer will be responsible for determining whether the orders may be executed in accordance with all of the rules applicable to the execution of equity orders, including compliance with the applicable short sale, trade-through, and trade reporting rules. As with the current procedure, the stock-option order will not be executed on the ISE if the broker-dealer cannot execute the equity orders at the designated price. ISE members will be able to continue using the current manual procedure for executing stock-option orders if they choose to do so.

Because the options leg of a stock-option order must be executed in \$.05 increments (for options trading below \$3) and \$10 increments (for options trading at or above \$3),⁴ while the stock leg(s) of a stock-option order trade in \$.01 increments, the ISE notes that it is not always possible to achieve the desired net price for stock-option orders. Accordingly, the ISE has proposed to amend ISE Rule 722(b)(1) to permit the execution of the option leg(s) of stock-option orders in one-cent increments. The options leg(s) of a stock option order will continue to be reported through the Options Price Reporting Authority ("OPRA") with a code indicating that the trade was part of a complex order. The trade will be reported at its actual price.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that permitting the execution of the options leg(s) of a stock-option order in one-cent increments and allowing ISE members to elect to have the ISE

electronically communicate the stock leg(s) of a stock-option order to a designated broker-dealer for execution should facilitate the execution of stock-option orders. The Commission notes that an ISE member that elects to have the ISE electronically communicate the stock leg(s) of a stock-option order to a designated broker-dealer must enter into a customer agreement with the designated broker-dealer. In addition, the Commission notes that the ISE's current procedure for executing stock-option orders will continue to be available to ISE members that choose not to use the automated procedure.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-ISE-2003-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49247; File No. SR-NASD-2004-029]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Dual Listing

February 13, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,³ and

Rule 19b-4(f)(1) thereunder,⁴ as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

4400. NASDAQ National Market—Issuer Designation Requirements

Pursuant to SEC Rule 11Aa2-1, those securities for which transaction reporting is required by an effective transaction reporting plan are designated as national market system securities. A transaction reporting plan has been filed with the Commission under which securities satisfying the requirements of this Rule 4400 Series are covered by the transaction reporting plan and transactions in such securities are subject to the transaction reporting provisions of the Rule 4630 Series.

IM-4400 Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq National Market ("NNM"). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the NNM, Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system

⁴ See ISE Rule 710.

⁵ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

plans ("CQ and CTA Plans"), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System ("ITS") shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under NASD rules as a result of a single security being both a CQS security, which is subject to one set of rules, and a listed NNM security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas NASD Rule 4120(a)(1), (4), (5), (6), and (7) shall not. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The recent repeal of NYSE Rule 500 removed a significant barrier to competition that inhibited NYSE-listed companies from listing on other markets.⁵ In light of that repeal, Nasdaq has determined to permit the dual listing of NYSE-listed securities on Nasdaq. Consistent with section 11A(a)(1)(C)(ii) of the Exchange Act, Nasdaq believes this action will promote fair competition between exchange markets and markets other than exchange markets, and by furthering the development of the national market system. Dual listing will allow companies to demonstrate to their shareholders and to investors that they meet Nasdaq's governance requirements. In addition, dual listing on Nasdaq with its competitive market maker system should benefit investors and shareholders by increasing liquidity, reducing execution time, and narrowing spreads. The comparison between executions on Nasdaq and on the NYSE should also enable listed companies to assess the benefits of a Nasdaq listing.

The proposed interpretation of NASD Rule 4400 is designed to facilitate the transition to dual listing on NYSE and Nasdaq, and to minimize the potential for confusion among investors, shareholders, and market participants that trade these securities. Specifically, Nasdaq will exercise its discretion to refrain from designating or registering such securities as Nasdaq national market system securities and thereby subjecting them to coverage under the Nasdaq UTP Plan. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation

Service and Consolidated Tape Association national market system plans ("CQ and CTA Plans") will remain subject to those plans and will not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market.⁶ At this time, Nasdaq believes that subjecting a single security to two national market system plans would potentially cause confusion to public investors and market participants that are unaccustomed to dual listings among the nation's major equity markets.

Based upon this interpretation, Nasdaq will regard dually listed securities as CQS securities rather than as Nasdaq listed securities for quoting, trading, and transaction reporting purposes. As a result, dually listed securities shall continue to be traded under their current one, two, or three-character ticker symbol, rather than trading under a four-character symbol as do exclusively listed NNM securities. In addition, Nasdaq will continue to send all quotation and transaction reports for consolidation and dissemination to the Securities Industry Automation Corporation, the securities information processor for the CQ and CT Plans, rather than sending them to Nasdaq, the processor for the Nasdaq UTP Plan. Dually listed issues will continue to trade over the Intermarket Trading System ("ITS") and on the Nasdaq Intermarket trading platform as CQS securities as they do today.⁷

Nasdaq is also resolving potential conflicts that may arise under NASD rules as a result of a single security being both a CQS security, which is subject to one set of rules, and a listed NNM security, which is subject to a different set of rules. Specifically, while dually listed securities will be Nasdaq securities for purposes of rules related to listing and delisting, they will remain as CQS securities under all other NASD rules. Regarding dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CT, CQ, and

⁶ Nasdaq's interpretation resolves all potential ambiguity in its rules to avoid a conflict between national market system plans. For example, Nasdaq's interpretation is consistent with NASD Rule 4440(a)(5)(C), which pertains to designation or registration of a CQS national market system security as a Nasdaq national market system security.

⁷ The current trading platform for CQS securities is the Computer Assisted Execution System or "CAES". Nasdaq has filed SR-NASD-2003-149 to propose to implement the Nasdaq's SuperMontage as the trading platform for the InterMarket. As the trading platform for the InterMarket, SuperMontage will continue to process quotation, trading, and transaction reporting for CQS securities in compliance with the CQ/CT and ITS Plans.

⁵ See Securities Exchange Act Release No. 48720 (October 30, 2003), 68 FR 62645 (November 5, 2003) (SR-NYSE-2003-23) (approval order).

ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the Nasdaq InterMarket.

Dually listed securities will be regarded as CQS securities in all cases where NASD rules governing quotation, trading, and transaction reporting refer to CQS securities or Nasdaq listed securities or both. For example, Nasdaq will not exercise its authority under NASD Rule 4120(a)(1), (4), (5), and (6) to halt trading in Nasdaq listed securities but will instead defer to the trade halt authority of the primary market under the CQ and CT Plans and apply NASD Rule 4120(a)(2) and (3) governing CQS securities. Rule 10a-1 under the Act⁸ governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 3350 governing short sales of Nasdaq listed securities. Market makers in dually listed securities will retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities rather than assuming the obligations appurtenant to quoting, trading, and transaction reporting of Nasdaq listed securities. The fees applicable to trading of CQS securities, set forth in NASD Rule 7010, will continue to apply to dually listed issues.

2. Statutory Basis

Nasdaq believes that the proposed interpretation is consistent with the provisions of section 15A(b)(6) of the Act⁹ in that treating dually listed securities as CQS securities is specifically designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Nasdaq also believes the interpretation is also consistent with the provisions of section 15A(b)(6) of the Act¹⁰ in that it is designed to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

Finally, Nasdaq believes the proposed interpretation also supports the goals of section 11A, particularly the protection

of investors, the maintenance of fair and orderly markets and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, Nasdaq believes the proposed interpretation is designed to facilitate competition for listing and multiple listings.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,¹¹ and Rule 19b-4(f)(1)¹² thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2004-029 and should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49246; File No. SR-NASD-2003-183]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person

February 13, 2004.

I. Introduction

On December 9, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further required that each member quarterly review and update the CE contact person(s) information. The proposed

⁸ 17 CFR 240.10a-1.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(11).

¹¹ 15 U.S.C. 78s(b)(3)(A)(i).

¹² 17 CFR 240.19b-4(f)(1).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.